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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 703(e)	)	
of the Telecommunications Act	)	CS Docket No. 97-151
of 1996	)	
	)	
Amendment of the Commission's Rules	)	
and Policies Governing Pole Attachments	)	

TO: THE COMMISSION

COMMENTS OF SBC COMMUNICATIONS INC.

SBC COMMUNICATIONS INC.

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May 12, 1998

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Comments of SBC Communications Inc.
CS Docket No. 97-151

SUMMARY*

The Commission should not impose the cumbersome and complex process of determining rates in multiple rate zones, especially in light of the pole attachment rules' objective of providing a simple, expeditious and predictable process for resolving disputes and the streamlining requirements of the 1996 Act. The Commission has provided little, if any, justification for an extremely burdensome and complex process for determining the average number of attaching entities. SBC requests that utilities be allowed to develop the presumptive average on a state-wide basis. Further, given the problems with the Commission's three-zone definition, those utilities that opt to draw multiple rate zones should be permitted to draw their own boundaries.

The Commission should provide a clearer distinction between usable and unusable conduit space. However, SBC does not agree with commenters that urge the Commission to abandon altogether its initial approach of distinguishing usable and unusable conduit space based on the type of costs incurred. This method better approximates the actual unusable space that one would find using a pure cubic footage methodology. That is, if one took a cross-section of a conduit, one could see that certain space can be occupied by cables, but other space is already occupied by the supporting materials that form the conduit. By adopting this method, the Commission does not ignore a significant portion of the unusable space that exists outside of the holes or spaces running through the

* The abbreviations used in this Summary are defined in the body of these Comments.

interior of the conduit. This method is a reasonable approach to the difficult task of identifying the unusable space in a conduit system.

The Commission should reject requests that it divide usable pole space into segments smaller than one foot and usable conduit space into segments smaller than a half-duct. The Commission should not extrapolate from the current and future hypothetical possibilities to assume the most efficient use of all pole and conduit space. Consistent with the existing presumptions, the pole attachment rules should be based on the average condition of poles and conduit that has been installed over the last several decades. The proper allocation of costs under Section 224 should be based on present reality, not fiction or speculation about the future use of pole and conduit space.

Only those parties who are capable of having pole attachments that are subject to Section 224 should be counted as attaching entities. Therefore, electric utilities and ILECs should not be counted. There is a rational basis for excluding entities that are neither cable operators nor telecommunications carriers: that is the basis for determining which attachments are governed by Section 224. The Commission should go one step further to achieve greater consistency with Section 224(a) by not giving ILECs an additional share of unusable space costs when they already receive the one-third statutory share and, by default, the cable-only service provider's share.

SBC agrees with Edison/UTC that the Commission should not apply Section 224 to regulate the rates charged for any wireless access to utility poles. Wireless transmitters

can be placed in a wide variety of locations on a variety of structures. Given that a typical license agreement for placement of a wireless transmitter on private property may cost up to several hundred dollars per month, it is extremely unfair and discriminatory to require utilities to charge less than ten dollars per year. Depriving utility antenna site owners of revenue at market rates while allowing other antenna site owners, including the federal government itself, to continue charging market rates that are hundreds of times higher than regulated rates is not rationally related to any legitimate federal purpose. For these and other reasons, the Commission should construe Section 224 to be applicable only to attachments that are used to provide "wire communication."

While SBC does not agree with MCI's request that host attachers be treated for all purposes as if they are "utilities", SBC does agree that host attachers should not be allowed to charge rates to overlashers that in the aggregate recover more than they have paid to the pole owner, except for any direct administrative cost. In other words, the host attacher should not be allowed to make a profit on the "sublease" of space to the overlashers.

As Bell Atlantic and MCI argue, it is improper for the Commission to apply the Section 224(d) rate to attachments that do not "solely provide cable service." If the cable operator does nothing more than provide a connection or transparent transmission path to and from an Internet service provider, then, what it is doing is clearly a telecommunications service, i.e., offering transmission of information without change in

its form or content as sent and received. However, even if the cable operator goes beyond the mere provision of a transmission path, its provision of Internet-related content or features would also go beyond the provision of cable service and require the application of Section 224(e)'s telecommunications attachment rate. This result is required because, unlike Section 224(d), which is limited to "solely" cable service, Section 224(e) is not limited to "solely" telecommunications service.

In any event, the Section 224(e) telecommunications attachment rate should be applied to a cable operator's provision of Internet telephony or any other telecommunications-like non-cable service.

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COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC") hereby responds, on behalf of Southwestern Bell Telephone Company ("SWBT"), Pacific Bell and Nevada Bell, to certain petitions for reconsideration of the Commission's Report and Order[1] in the above-captioned proceeding.

I. UTILITIES SHOULD BE PERMITTED TO USE A SIMPLE METHOD OF DETERMINING THE AVERAGE NUMBER OF ATTACHING ENTITIES.

Edison/UTC and USTA both recognize the problems with the Commission's requirement to use a complex process for determining the average number of attaching entities in multiple geographic areas.[2] For example, while the Commission purports to establish three separate and distinct geographic classifications, (1) urban, (2) urbanized

[1] FCC 98-20, released February 6, 1998.

[2] Edison/UTC Petition at 22-23.

and (3) rural, as Edison/UTC observes, "the FCC's decision fails to account for the fact that the U.S. Census Bureau provides for a great deal of overlap between urban, rural and urbanized areas."[3] In fact, as SBC explained in its Petition, all of what the Census Bureau considers an "urbanized area" is also considered to be part of the "urban" classification.[4] It is no wonder that USTA characterizes these geographic classifications as "very confusing."[5] SBC wholeheartedly agrees with USTA's assessment of this process as "far more complex than necessary for sorting the average number of attaching entities . . .."[6] In fact, it is extremely difficult, if not impossible, to reconcile the process described in the Report and Order with the Census Bureau classifications. Aside from the conflict between the separate and distinct areas adopted by the Commission and the overlapping areas in the Census Bureau geographic guidelines, it is also not possible for the utility to develop these presumptive averages "through information it possesses,"[7] as the Report and Order indicates. Instead, assuming utilities can sort out the conflicting definitions, they will be required to undertake a complex and expensive process of counting or

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[3] Edison/UTC Petition at 22.

[4] SBC Petition at 14.

[5] USTA Petition at 10.

[6] Id.

[7] Report and Order, ¶¶ 74, 78.

sampling the number of attaching entities within multiple irregularly shaped geographic areas throughout their service areas.

Edison/UTC and USTA both conclude that the Commission should not dictate these multiple geographic boundaries; and instead, that the Commission should allow utilities the flexibility to determine the geographic areas that best suit their operations, such as their entire service area.[8] SBC agrees that utilities should have more flexibility than the Report and Order permits. That is, as SBC explained in detail in its Petition, the Commission should not impose the cumbersome and complex process of determining rates in multiple rate zones, especially in light of the pole attachment rules' objective of providing a simple, expeditious and predictable process for resolving disputes and the streamlining requirements of the Telecommunications Act of 1996 (the "1996 Act") that require the Commission to determine whether each of its regulations is necessary in the public interest.[9] In making this determination, the Commission must consider whether the benefit of a regulation clearly outweighs the cost and burden it imposes. In this case, the Commission has provided little, if any, justification for an extremely burdensome and complex process. Further, that process contradicts the

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[8] Edison/UTC at 22; USTA at 10-11.

[9] SBC Petition at 10-16.

Commission's previous decisions to keep the pole attachment rules simple, expeditious and predictable.

While SBC agrees with Edison/UTC and USTA that multiple geographic zones should not be mandatory, for the sake of consistency and predictability, SBC requests that utilities be allowed, at a minimum, to develop the presumptive average on a state-wide basis.[10] Further, given the problems with the Commission's three-zone definition, those utilities that opt to draw multiple rate zones should be permitted to draw their own boundaries.[11]

II. IT IS REASONABLE TO DISTINGUISH USABLE AND UNUSABLE CONDUIT COSTS BASED, IN PART, ON THE TYPE OF COSTS INCURRED.

While it has been a long-standing objective of the pole attachment process to be simple, expeditious and predictable, some aspects of the process have inherent difficulties. Applying the pole attachment rules to conduit has been one of those difficult areas, as the Commission first recognized in the Multimedia decision.[12] While some

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[10] Id.

[11] Id. at 15-16.

[12] Multimedia Cablevision, Inc. v. Southwestern Bell Telephone Company, 11 FCC Rcd 11202 ¶¶18-22 (1996) ("Multimedia").

imprecision is necessary to achieve simplicity, the Commission should not oversimplify the conduit space allocation regardless of reasoning or impact, as some petitioners' suggestions imply.

While, as explained in SBC's Petition, the Commission should provide a clearer distinction between usable and unusable conduit space,[13] SBC does not agree that the Commission should abandon altogether its initial approach of distinguishing usable and unusable conduit space based on the type of costs incurred.[14]

NCTA argues that this distinction is not applicable to conduit because all conduit space is usable. NCTA reasons that the 1996 Act "defines 'usable space' in purely aerial terms."[15] However, NCTA's reasoning fails to consider that Section 224(e)(2) requires a special method of allocating "the cost of providing space on a pole, duct, conduit or right-of-way other than the usable space."[16] If there were no unusable space in a conduit, as NCTA suggests, then there would be no reason for Section 224(e)(2) to specify that unusable duct and conduit space is to be allocated based on the

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[13] SBC Petition at 16-18.

[14] MCI at 14-19; NCTA at 2-5.

[15] NCTA at 4.

[16] 47 U.S.C. § 224(e)(2) (emphasis added).

number of attaching entities.[17] There clearly is unusable space in a conduit system: the empty space in which cables are placed is usable, but the surrounding materials (e.g., cement, PVC, gravel) that separate the duct spaces occupy an unusable area.

Section 224's space allocation is difficult to apply to conduit. In Multimedia, the Commission recognized the difficulty of applying the pole attachment rules to conduit capacity, that is, the usable space that was occupied or available for occupancy. The Commission described one theoretical alternative as follows:

> As an alternative, it might be possible to approximate conduit space by utilizing a pure cubic footage methodology as articulated by Section 224. Under this approach, total conduit space would be the total cubic footage of the conduit system. The amount occupied by the cable operator would be the total cubic footage of its cables in the conduit system.[18]

While Multimedia was only concerned with the allocation of usable space pursuant to Section 224(d), and thus, it did not need to identify all of the unusable space beyond the "rentable" space within the conduit system, a method of identifying unusable space like the one adopted in the Report and Order better approximates the actual

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[17] Besides, the reason for the definition of usable space in terms of poles is that poles were the principal target of the Pole Attachment Act of 1978, as conduit was seldom used by cable operators. Accordingly, subsection 224(d) (2) indicates that its definition is only for purposes of "this subsection," which contains the method for the cable service attachment rate.

[18] Multimedia, ¶ 18 (emphasis added).

unusable space that one would find using a pure cubic footage methodology. For example, it recognizes that the surrounding material that protects the cables from moisture and rodents is in some ways like the buried portion and the ground clearance of a pole.[19] If one took a cross-section of a conduit, one could see that certain space can be occupied by cables, but other space is already occupied by the supporting materials that form the conduit.

By using the type of costs incurred, the Report and Order adopted a reasonable approach to the difficult task of identifying the unusable space in a conduit system. With the clarification requested by SBC in its Petition, this should be a workable approach. Specifically, SBC requested that the Commission clarify that the usable space is the cost of the materials that form the walls of the individual ducts.[20] Using this criteria, a utility can look at recent cost data and determine what portion was spent on the

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[19] It is true , as NCTA explains, that it is difficult to draw analogies between poles and conduit, but the Commission has finessed this difficulty by using the types of costs, instead of spatial considerations. NCTA complains that the Commission has never treated certain types of pole costs as unusable, NCTA at 4. An easy method already exists for poles; so it is not necessary to resort to another method. The difficulty of drawing parallels between poles and conduit and the two separate allocation methods is not a good reason to ignore the unusable conduit space altogether. As an example, if one is drawing parallels, it is difficult to understand why the materials in a conduit system are any less deserving of the "unusable" designation than the buried section of the pole.

[20] SBC Petition at 16-18.

materials that form the individual ducts compared to its total conduit construction costs. Then, this ratio can be applied to the embedded costs.

While this process is not as simple and expeditious as using publicly available data from reports, it can be verified by an examination of the recent invoices or other cost data used by the utility. This approach also does not ignore a significant portion of the unusable space that exists outside of the holes or spaces running through the interior of the conduit system.[21] For these reasons, the Commission should reject the objections to its method of distinguishing usable and unusable conduit and clarify that the usable costs are the costs of the materials forming the individual ducts, as requested in SBC's Petition.

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[21] MCI criticizes the foundation for the Commission's approach and questions whether it has any "basis in reality." MCI at 17. For example, MCI claims that it is arbitrary to consider space outside of the conduit system to be unusable, and questions the analogy between the unusable pole space one must climb to reach the usable space and "the level down to which one must go in order to lay the system." Report and Order, n. 355. Actually, the Commission is not adding space outside the system to the unusable category; instead, it is using a method that directly considers costs to arrive at a better allocation of the unusable space within the conduit system, in recognition of the concrete, manholes and other structures and materials that surround and support the usable conduit capacity. The cost of the portion of the pole one must climb to reach usable space is considered unusable. Similarly, the costs incurred to reach the depth of the conduit system to place that system are considered unusable. Under this approach, the costs that are associated with usable conduit space are those incurred for the materials that form the usable ducts.

III. THE COMMISSION SHOULD RETAIN THE HALF-DUCT CONVENTION FOR CONDUIT AND THE ONE-FOOT PRESUMPTION FOR POLES.

The Commission should not adopt presumptions that would divide usable pole space into segments smaller than one foot and usable conduit space into segments smaller than a half-duct, as sought by ICG and MCI, respectively.[22] The Commission should not adopt presumptions that are based upon hypothetical or exceptional circumstances.[23] Instead, consistent with its other presumptions, such as the 13.5 foot usable space presumption, these presumptions should be based on the average condition of poles and conduit that have been installed over the last several decades. Thus, for example, MCI points to comments that new entrants are placing three or more inner ducts in some conduit.[24] However, just because it is possible today to place more than two inner ducts in some locations that have four-inch duct does not mean that more than two inner ducts is the average condition throughout the conduit system. Aside from ignoring the concept of averages, a fraction smaller than one-half ignores many of these real-world circumstances of conduit such as that much of the embedded conduit has ducts that are smaller than four inches. MCI improperly extrapolates from the current and

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[22] ICG at 9-13; MCI at 23-24.

[23] SBC Reply Comments, CS Docket No. 97-98, at 14-17. See also comments cited in footnote 30, infra.

[24] MCI at 23.

future hypothetical possibilities to assume the most efficient use of the largest available duct throughout the entire embedded base of conduit.[25] This the Commission should not do. This would presume that an ILEC could rebuild its entire conduit system from scratch today using the largest available duct size and all of the latest technology and construction standards.

In any event, the half-duct convention is only a presumption which can be rebutted in the appropriate circumstances.

Likewise, the one-foot presumption should be retained consistent with the original intention of the Pole Attachment Act and the standard utility practice reflected in the Blue Book Manual of Construction Procedures.[26] One foot is consistent with the average conditions that exist in the pole plant. The fact that less than one foot is theoretically possible does not change the average conditions that should be the basis for the presumptions in the pole attachment rules.

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[25] See SBC Comments, CS Docket No. 97-151, at 31-32. The half-duct convention is as valid today as it was two years ago at the time of the Multimedia decision and ten years ago when it was first conceived in Massachusetts.

[26] Report and Order, ¶ 84; Bellcore, Blue Book -- Manual of Construction Procedures, § 3.1 at 3-1 (Issue 2, December 1996) ("Blue Book").

ICG claims that "each attachment can occupy as little as four inches of usable pole space."[27] ICG's argument admits that this is an exceptional case. As the Blue Book says,

> The clearance between communication cables supported on different suspension strands must be at least 12 inches (300 mm) at the pole. In most cases this will be a vertical clearance, but there are exceptions as explained in this section.[28]

In order to attempt to achieve a fair allocation, the formula needs to continue to be based on typical circumstances, rather than on exceptions. ICG contends that the presumptions should be changed to provide an incentive to allow construction practices that would make the most efficient use of pole space and avoid impeding competitive entry.[29] Under this distorted line of reasoning, the Commission could assume a fictional pole plant that consisted primarily of fifty-foot poles. Certainly, such tall poles would provide ample room for competitive entry. However, using actual historical, embedded costs with a fictional fifty-foot pole height would understate the cost per foot. While this might provide some incentives for the ILEC, it would also fail to permit the ILEC to be compensated as required by Section 224. As SBC and others have explained,

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[27] ICG at 10 (emphasis added).

[28] Blue Book, § 3.1, at 3-1 (emphasis added).

[29] ICG at 12-13.

there are problems with this fictional-world.[30] Besides the proper allocation of costs should be based on present reality, not fiction or speculation about the future.

For these reasons and those reasons argued previously in this proceeding and in CS Docket No. 97-98, the Commission should reject ICG and MCI's requests to change the presumption that each attachment occupies one foot of pole space and a half-duct of conduit space, respectively.

IV. ELECTRIC UTILITIES SHOULD NOT BE COUNTED AS ATTACHING ENTITIES UNLESS THEY PROVIDE TELECOMMUNICATIONS SERVICES.

NCTA and ICG question the Commission's decision not to count electric utilities as "attaching entities."[31] They argue that electric utilities should be counted because electric utilities benefit from the unusable space.[32] NCTA also claims that the legislative history and potential results support its position.[33]

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[30] See, e.g., SBC Reply Comments, CS Docket No. 97-98, at 20-22; SBC Reply Comments, CS Docket No. 97-151, at 25-27; American Electric Power Reply Comments, et al., CS Docket No. 97-98, at 38-39; Electric Utilities Coalition Reply Comments, CS Docket No. 97-98, at 19-27, 39-41 Exhibits 7, 8; GTE Reply Comments, CS Docket No. 97-98, at 20; USTA Reply Comments, CS Docket No. 97-98, at 14-16; Bell Atlantic Reply Comments, CS Docket No. 97-151, at 17-18 and n.43; Edison/UTC Reply Comments, CC Docket No. 97-151, at 24-25; GTE Reply Comments, CC Docket No. 97-151, at 15; Ohio Edison Reply Comments, CC Docket No. 97-151, at 11-15.

[31] ICG at 6-8; NCTA at 5-8.

[32] ICG at 7; NCTA at 6.

[33] NCTA at 6-7.

Only those who are capable of having attachments that are subject to Section 224 should be counted as attaching entities.[34]

Accordingly, consistent with Section 224(a), SBC would only count cable operators and telecommunications carriers other than ILECs. SBC has asked the Commission to reconsider the decision to count ILECs as attaching entities based on the definition of telecommunications carrier in Section 224 and because it is unfair to hold ILECs responsible for two, or possibly, three shares of the unusable space costs while claiming that the result is an equal apportionment of costs among the beneficiaries.[35]

While SBC questions the decision to count ILECs, SBC does agree with the decision not to count electric utilities. There is a rational basis for excluding entities that are neither cable operators nor telecommunications carriers: that is the basis for determining which attachments are governed by Section 224. By drawing the line based on Section 224, the Commission avoids extending Section 224 beyond the attaching entities that are subject to its controls.[36] As explained in SBC's Petition, the Commission

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[34] In fact, ICG suggests that this is the unstated reason underlying the Commission's conclusion. ICG at 7. However, ICG fails to account for the fact that this rationale would also exclude ILECs.

[35] SBC Petition at 8-10.

[36] An inconsistency in ICG's and NCTA's arguments is that they claim electric utilities should be counted whether or not they provide telecommunications service but they do not apply the same reasoning to government agencies. See, e.g., ICG Petition at 7 ("all users . . . except government users that do not provide telecommunications or cable

should go one step further to achieve greater consistency with Section 224(a) by not giving ILECs an additional share of unusable space costs when they already receive the one-third statutory share and, by default, the cable-only service provider's share.[37]

NCTA appears to be most concerned that electric utilities will benefit from the use of the poles, but not be allocated a sufficient share of the costs.[38] In reality, the allocation of costs between ILECs and electric utilities is generally determined by joint use agreements, rather than by Section 224. While electric utilities do benefit from the use of ILEC poles, they receive a sufficient allocation of cost pursuant to joint use agreements, and thus, it is not necessary and would be improper to apply Section 224 to force an allocation of costs on the electric utilities.

In contrast, ICG is most concerned that not counting electric utilities will allow ILECs to overrecover their pole costs.[39] In actuality, ILECs are going to be responsible not only for the one-third statutory share of unusable space and, by default, for the cable-only service provider's share, but also for the costs of vacant usable space they are required to make available. Further, if the Commission does not reconsider its

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service").

[37] SBC Petition at 8-10.

[38] NCTA at 5-6.

[39] ICG at 6-7.

decision to count ILECs as "attaching entities," the ILEC will receive yet another share of the unusable space cost.

ICG's overrecovery concern is improperly based on the assumption that ILECs might recover as much as 60% of their costs from the electric utilities under joint use agreements. First, it would be arbitrary to consider an uncertain recovery of costs from the joint user or owner when that recovery is not governed by Section 224. Second, under some joint use agreements, no costs are recovered; instead, the utilities merely share or exchange the use of each others' poles at no charge. Third, in the case of joint owners, each owner may be entitled to recover its own costs directly from the attacher based on its ownership of the pole; so, contribution between the owners should be irrelevant. For these reasons, the assumption that LECs would overrecover if electric utilities are not counted is flawed.

NCTA also misjudges the impact of not counting electric utilities when it states that the "first CLEC would pay all of the allocable (2/3) costs for nonusable space when using a two-party pole . . .."[40] A typical pole used by a CLEC would have at least two attaching entities: the CLEC and the cable operator.[41] Each of the two would receive

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[40] NCTA at 7.

[41] Actually under the Report and Order, such a typical pole would have three attachers because the ILEC would be counted. As a result, the two attachers each would be allocated 2/9ths and the ILEC would be responsible for 5/9ths, plus the cable-only

a one-third share of the unusable space costs (although the cable operator might be exempt from paying for its one-third). And if there are additional CLECs or cable operators competing in an area, the share allocated to each declines dramatically.

The legislative history and the language of Section 224 are not entirely conclusive as to whether to count electric utilities. In view of the ambiguity in Section 224, it is reasonable for the Commission to count attaching entities in terms of the scope of Section 224's regulation of rates for attachments by cable operators and telecommunications carriers (other than ILECs).[42]

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operator's 2/9ths, for a total of 7/9ths. SBC's view is that the Commission should reconsider and not count the ILEC. SBC Petition at 8-10.

[42] NCTA argues in the alternative, that even if all electric utilities are not counted as "attaching entities," those that use their poles for internal communications or any other "wire communication" purpose should be counted. NCTA at 7-8. NCTA reasons that this is necessary to be consistent with the initial decision in CC Docket No. 96-98, the Local Competition Order, 11 FCC Rcd 15499 ¶1174 (1996). However, NCTA is confusing two different issues. The issue in CC Docket No. 96-98 was when a utility would be deemed to be using its poles for "wire communication," as used in Section 224(a)(i), for purposes of triggering the application of Section 224. Here, however, the issue is who should be considered an "attaching entity" for purposes of Section 224(e)(2)'s allocation of unusable costs. There is no inconsistency between the Commission's conclusions on these two issues. The Commission can reasonably conclude that the "wire communication" that triggers access obligations is broader than the types of communications required to qualify as an attaching entity, especially in view of the definitions from the perspective of the attacher in Section 224(a)(5).

V. RATES FOR WIRELESS ATTACHMENTS SHOULD NOT BE SUBJECT TO SECTION 224 "RENT CONTROL."

SBC agrees with Edison/UTC that the Commission should not apply Section 224 to regulate the rates charged for any wireless access to utility poles.[43] Utility poles are not essential sites for wireless transmitters. Wireless transmitters can be placed in a wide variety of locations on a variety of structures. Even though building owners compete for the provision of rooftop antenna space, a typical license agreement for placement of a rooftop wireless transmitter may require payment of up to several hundred dollars per month. In contrast, if the standard pole attachment rate were applied pursuant to Section 224, it would be less than ten dollars per year. It is extremely unfair and discriminatory to apply this onerous "rent control" to a small segment of the entire group of potential antenna site providers. Giving wireless service providers preferential rates (up to several hundred times lower) for access to utility poles compared to the many other potential antenna sites is not only unfair, it is impermissible discrimination in violation of the Equal Protection Clause of the Constitution.[44] Such discriminatory treatment of utility poles as potential antenna sites does not rationally further any legitimate federal purpose. In fact, if there were such a purpose in granting preferential rates at a limited group of

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[43] Edison/UTC Petition at 13-16. Also, this issue should have been decided in CC Docket No. 96-98, where it is pending on reconsideration, rather than here.

[44] Id. at 15. U.S. Const. Amend. V.

sites, then one would expect the federal government to be the first to apply the same or similar "rent control" standards to sites on its own property. Instead, federal government property is being made available for wireless transmitters at market rates.[45]

The Fifth and Fourteenth Amendments guarantee the equal protection of the law, which generally means that all similarly situated people should be treated alike. Depriving utility antenna site owners of revenue at market rates while allowing other antenna site owners to continue charging market rates that are hundreds of times higher than the regulated rates is severely under-inclusive and is not rationally related to any legitimate federal purpose.

Similarly, such rate regulations should apply to all similarly situated antenna site landlords or to no one. Since the Commission does not have jurisdiction over non-carrier landlords, it should not apply this rent control to antenna site landlords at all.

Further, applying Section 224 to wireless transmitters to limit the rent utilities may charge per month to a fraction of what similarly situated Government and

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[45] Placement of Commercial Antennas on Federal Property," 62 Fed. Reg. 32611 (General Services Administration, Office of Governmentwide Policy, June 16, 1997) ("Executive departments and agencies should charge fees based on market value."); Executive Memorandum from the President, "Facilitating Access to Federal Property for the Siting of Mobile Services Antennas," 60 Fed. Reg. 42023 (August 14, 1995) ("agencies shall charge fees based on market value for siting antennas on Federal property."). If federal government property were made available at cost, as utilities are being required to do, one would expect even lower rates than those of the utilities.

private property owners may charge per year is inconsistent with the interpretation given to Section 704(c) of the 1996 Act.[46]

For these and other reasons argued in this proceeding and in CC Docket No. 96-98, the Commission should construe Section 224 to be applicable only to attachments that are used to provide "wire communication."[47]

VI. HOST ATTACHERS SHOULD NOT BE ALLOWED TO CHARGE THIRD PARTY OVERLASHERS EXCESSIVE RATES.

While SBC does not agree with the decision to allow third party overlashing at the sole discretion of the host attacher,[48] the Commission should reject most of MCI's proposed extensions of this decision.[49] For example, host attachers should not be treated for all purposes as if they are "utilities" themselves.[50] Allowing overlashing is quite different from allocating space on a pole. The overlashing cable may actually interfere with, or make more difficult and expensive, maintenance of each of the individual

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[46] Pub. L. No. 104-104, 110 Stat. 56, § 704(c) (1996) ("Reasonable fees may be charged to providers of such telecommunications services for use of property, rights-of-way and easements.")

[47] See e.g., Florida Power & Light Company's Petition for Reconsideration and/or Clarification of the First Report and Order, CC Docket No. 96-98, filed September 30, 1996, at 24-26.

[48] SBC Reply Comments, CS Docket No. 97-151, at 6-10.

[49] MCI Petition at 8-12.

[50] Id. at 10-12.